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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,404	02/12/2002	Rudolf Gartner	22750/525	7026
26646	7590	12/19/2003	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,404

Applicant(s)

GARTNER ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 11-20, in the paper filed September 15, 2003, is acknowledged. Claims 1-10 are withdrawn as non-elected.

Response to Amendment

2. The amendment filed with the election on September 15, 2003, has been entered. Claims 11-13 and 18-20 have been amended as requested. New claims 21-29 have been added.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Applicant claims a method of making "a tufted backing from thermoplastic polymer fibers or filaments processed into a spunbonded nonwoven." The method step comprise (a) bonding fibers or filaments having a titer of 6 to 15 dtex by needling, (b) bonding fibers or filaments having a titer of 1 to 5 dtex by using one of water jets and a combination of water jets and needling, (c) stretching the bonded fibers or filaments by up to 30% in the longitudinal direction, and (d) followed by drying and thermosetting. The claim is indefinite because it

unclear how the two fiber types (i.e., different titers) are structurally related in the tufted backing. Is the spunbond nonwoven comprised of the blend of two fibers? If so, how is it that the smaller titer fibers may be both hydroentangled and needlepunched, while the larger titer fibers are only needlepunched? Or, are there two layers with one spunbond layer comprised of needled fibers of the larger titer and another spunbond layer comprised of the needled and/or hydroentangled smaller titer fibers? If so, how are the two spunbond layers related? Are they integrated into a single layer? Are they laminated together? Or, are the fibers of different titer alternate embodiments of a single layer spunbond nonwoven?

Looking to the specification for clarity provides no help. The specification merely recites the same claim language at page 3, lines 23-30. Other mentions of the method of making the invention merely discuss a single titer range (1-15 dtex), wherein said fibers are “interwoven in a three-dimensional structure” “without additional binding components” or reinforcing aids (page 2, line 29-page 3, line 6). Additionally, the working example merely discusses making a spunbond nonwoven of fibers all having a titer of 4.3 dtex (page 4, lines 27-32). Thus, the specification cannot clarify the claimed invention of making a tufted backing including the steps of (a) bonding fibers having a titer of 6-15 dtex by needling and (b) bonding fibers having a titer of 1-5 by hydroentangling or a combination of hydroentangling and needling.

6. Claims 11-29 are also indefinite for the lack of a claimed process step to produce a “tufted backing.” The recited process steps merely produce a spunbond nonwoven, rather than a tufted backing.

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7. Claims 14 and 15 are indefinite because it is unclear what "treatment" occurs due to the pair of heated rollers. Is the nonwoven merely heated by the rollers, or is it calendered or embossed by said rollers?

8. Claims 16 and 17 are indefinite because it is unclear how the surface roughness is measured in units of length.

9. Claims 21-24, 26, and 27 are indefinite for the use of the phrase "and a 5% modulus value in the machine direction of [x] N/5 cm, but at least [y] N/gm²". It is unclear what the "at least [y] N/gm²" refers to. Is it a preferred value of the modulus? Is so, why are the units different from the claimed modulus range? Or, is it a measure of a different property?

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 11-29 are rejected under 35 USC 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not enable one to make the invention as claimed. As discussed above, the specification does not disclose how to make a tufted backing including the steps of (a) bonding fibers having a titer of 6-15 dtex by needling and (b) bonding fibers having a titer of 1-5 by hydroentangling or a combination of hydroentangling and needling. As such, the scope of the claim invention is not enabled and the claim is indefinite, as discussed above, to the extent that the claims are unexamined with respect to a prior art rejection.

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Conclusion

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
December 15, 2003